

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH O'CONNELL : CIVIL ACTION
:
v. :
:
CITY OF PHILADELPHIA and :
BRIAN ISSEL, Individually and :
In His Capacity as a Police :
Officer of the Philadelphia :
Police Department : No. 07-cv-04391-JF

FILED
AUG 15 2008
MICHAEL J. GUNZ, Clerk
Dep. Clerk

MEMORANDUM AND ORDER

Fullam, Sr. J.

August 14, 2008

Plaintiff contends that a Philadelphia police officer, without provocation, repeatedly struck and kicked him, causing severe injuries. He is suing the officer in question, Brian Issel, and the City of Philadelphia. The City has filed a Motion for Summary Judgment, contending that plaintiff has no evidence which would support a finding that the alleged violation stemmed from any official policy or practice of the City, hence that Monell liability cannot be established.

After reviewing the extensive summary judgment record, I conclude that summary disposition of this case would be inappropriate. Plaintiff's evidence would, at the very least, permit a rational fact-finder to decide that the defendant officer had a reputation among his fellow officers as being prone to use excessive force, and has frequently been the object of disciplinary complaints by civilians, but that he has never been disciplined; that plaintiff's complaints in this case received

little or no investigation or follow-up; and that the City of Philadelphia can therefore be regarded as having tolerated the use of excessive force by police officers, notwithstanding the Police Department rules and directives. Although the evidence would also permit a rational fact-finder to decide these issues in favor of the City, I conclude that a trier of fact should be permitted to address the issues.

An Order follows.

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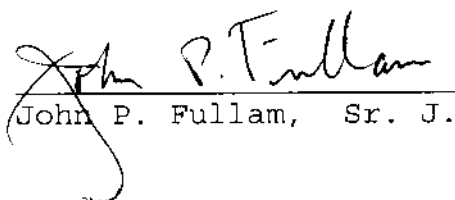
FILED
AUG 15 2008
U.S. DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
JUL 15 2008

ORDER

AND NOW, this 14th day of August 2008, upon
consideration of the Motion for Summary Judgment filed by the
City of Philadelphia, and plaintiff's response, IT IS ORDERED:

That the City's Motion for Summary Judgment is DENIED.

BY THE COURT:



John P. Fullam, Sr. J.

8-14-08- FAXED TO
A. BRIGANDI